The application was dismissed by the Commission with prejudice effective March 12, 1984 pursuant to request by Pacific Rim Broadcasting Co. See Memorandum Opinion and Order, FCC 84M-1202, released March 12, 1984.

An application of Micheal Parker for a new commercial television station on Channel 29 at Sacramento, California, FCC File No. BPCT-820824KJ, MM Docket No. 83-66, was dismissed with prejudice effective May 17, 1983 pursuant to request by Mr. Parker. See Memorandum Opinion and Order, FCC 83M-1594, released May 17, 1983.

In addition, Micheal Parker was an officer, director and shareholder of Mt. Baker Broadcasting Co., which was denied an application for extension of time of its construction permit for KORC(TV), Anacortes, Washington, FCC File No. BMPCT-860701KP. See Memorandum Opinion and Order, FCC 88-234, released August 5, 1988.

Although neither an applicant nor the holder of an interest in the applicant to the proceeding, Micheal Parker's role as a paid independent consultant to San Bernardino Broadcasting Limited Partnership ("SBB"), an applicant in MM Docket No. 83-911 for authority to construct a new commercial televison station on Channel 30 in San Bernardino was such that the general partner of SBB was held not to be the real party in interest to that applicant and that, instead, for the purposes of the comparative analysis of SBB's integration and diversification credit, Mr. Parker was deemed such. See e.g. Religious Broadcasting Network et. al., FCC 88R-38

released July 5, 1988. MM Docket No. 83-911 was settled in 1990 and Mr. Parker did not receive an interest of any kind in the applicant awarded the construction permit therein, Sandino Telecasters, Inc. See Religious Broadcating Network et. al. FCC 90R-101 released October 31, 1990.

ATTACHMENT C

Amendment to Assignee's Portion of Application
(File No. BALIB-920810OM)
for consent to the assignment of license
of International Shortwave Station KCBI
(since changed to KAIJ), Dallas, Texas

OCT 2 9 1992

Oct 30 10 47 AM '92 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AUDIO SERVICES
DIVISION

RE: KCBI

Please amend the application by Two If By Sea Broadcasting Corporation to acquire Station KCBI from Criswell Center for Biblical Studies by including the attached statements.

Date: 10/28/92

President
Two If By Sea Broadcasting
Corporation

Re: Two If By Sea Broadcasting Corporation

Two If By Sea Broadcasting Corporation ("Two If By Sea") has applied for authority to acquire Station KCBI from Criswell Center for Biblical Studies. As part of that application, Two If By Sea listed applications in which its officers, directors and principals had held interests and which were dismissed at the request of the applicant. This will confirm that no character issues had been added or requested against those applicants when those applications were dismissed.

Dated: Oct. 27, 1992 By: _____

President
Two if By Sea Broadcasting
Corporation

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of November, 1997, I caused copies of the foregoing "Petition to Deny, Dimiss or Hold in Abeyance" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

Desert 31 Television, Inc.
Two If By Sea Broadcasting Corporation
22720 S.E. 410th Street
Enumclaw, Washington 98022

Peoria Broadcasting Services, Inc.
124 Monterey Road - #304
South Pasadena, California 91030

Howard A. Topel, Esquire
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
Counsel for Two If By Sea
Broadcasting Corporation

/s/ Harry F. Cole
Harry F. Cole

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
Martin W. Hoffman,	)	
Trustee-in-Bankruptcy for Astroline	)	File No. BRCT-881201LG
Communications Company Limited	)	
Partnership	)	
	)	
For Renewal of License of	)	
Station WHCT-TV, Hartford, Connecticut	)	
	)	
and	)	
	)	
Astroline Communications Company	)	
Limited Partnership,	)	
Proposed Assignor	)	
and	)	File No. BALCT-930922KE
	)	
Two If By Sea Broadcasting Corporation	)	
Proposed Assignee	)	
	)	
For Consent to the Assignment of	)	
License of Station WHCT-TV,	)	
Hartford, Connecticut	)	
	)	
	)	
SHURBERG BROADCASTING OF HARTFORD	)	File No. BPCT-831202KF
	)	
For Construction Permit	)	

TO: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

HARRY F. COLE

Bechtel & Cole, Chartered
1901 L Street, N.W. - Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Alan Shurberg d/b/a
Shurberg Broadcasting of Hartford

March 21, 1997

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SUMMARY

Contrary to the various assertions advanced by Two If By Sea Broadcasting Corporation ("TIBS"), the Commission's Letter of January 30, 1997 correctly applied the law to the facts of this unusual case. Under the circumstances presented here, consideration of the gross misconduct of Astroline Communications Company Limited Partnership is clearly warranted. The equities of this case demand that Astroline's qualifications be considered before any further action could possibly be taken with respect to any proposal to assign the license which it obtained through misrepresentation. This is especially true in view of the fact that Shurberg Broadcasting of Hartford ("SBH") has had a competing application pending since even before Astroline first filed its application seeking to obtain the station's license in 1984.

While TIBS claims that SBH has withheld relevant information from the Commission, the fact is that the information referred to by TIBS was not relevant at all to the determination which must be made by the Commission. Indeed, that information -- which consists of an opinion of a Bankruptcy Judge -- does not address in any way the standards applied *by the Commission* with respect to *the Commission's* own policies.

The "bare license" policy clearly applies to the instant situation. It is clearly established that, at the time the TIBS assignment application was filed in 1993, neither TIBS nor its assignor held anything other than the bare license for the station. That situation remained the case until mid-January, 1997, at which time TIBS obtained a lease from a third party not involved in any way with the assignor. SBH had been arguing since 1992 that the

assignor had nothing to assign -- as the Commission's January 30, 1997 Letter correctly observed -- and nothing that TIBS has offered in its Petition for Reconsideration alters that basic truth.

Finally, while TIBS would doubtless prefer to avoid any particular scrutiny, the fact is that the Commission has *already*, at least twice, had the opportunity to scrutinize the behavior of TIBS's dominant principal, Micheal Parker. Both times it was determined that Mr. Parker or the entity with which he was associated had engaged in fraud or deceit upon the Commission. Moreover, it cannot be said that those findings were somehow inaccurate or out-dated aberrations. Since 1990, Mr. Parker has had occasion to file multiple applications with the Commission, none of which contained a full, forthright and candid description of the earlier adverse rulings relative to him or his activities. This reflects a pattern of fraud, deceit or (at the very least) lack of candor which establishes that the two earlier adverse decisions were right on the mark.

SBH joins with TIBS in its repeated suggestions that it would be preferable to avoid a hearing in this matter, if at all possible. SBH submits that this can be accomplished by any one of at least three alternate routes. The Commission could dismiss the pending renewal application for Station WHCT-TV because the licensee failed to file a timely hearing fee. Such dismissal would be completely consistent with well-established, clearly-articulated Commission policy and would not require a hearing. Alternately, the Commission could dismiss the pending renewal application because the incumbent has not demonstrated that it has anything more than a bare license to assign. Again, such a dismissal would not require a hearing and would be consistent with extensive authority. Finally, the Commission could

dismiss the renewal application because of the misrepresentations committed by Astroline. The factual record on this point is clear and uncontested at this point, even by Astroline's Trustee in Bankruptcy, Martin Hoffman. Because there is no substantial and material fact relative to Astroline's misconduct, the renewal application may be dismissed or denied without hearing at this point.

1. Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("SBH") hereby opposes the Petition for Reconsideration filed by Two If By Sea Broadcasting Corporation ("TIBS") with respect to the Commission's January 30, 1997 Letter relative to the above-captioned matters. As set forth in detail below, TIBS's arguments all fail even to acknowledge, much less address, crucial aspects of both the factual record of this proceeding and the legal precedent on which TIBS relies.

A. ***Consideration of Astroline's Misconduct Is Clearly Warranted.***

2. TIBS opens its salvo of arguments with extensive discussion of *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974) and its progeny. TIBS's position seems to be that, simply because Astroline Communications Company Limited Partnership ("Astroline") [1/] is in bankruptcy and is trying to sell the station license, the Commission is somehow automatically obligated to ignore Astroline's gross misconduct as "irrelevant". That, however, is not the law, nor is it a result which is supported by the facts of this case.

3. As an initial matter, TIBS fails to realize that the bankruptcy proceeding has already been conceded to be "irrelevant" to the Commission's licensing procedures -- by Astroline itself. The bankruptcy proceeding at issue here was initiated in 1988. At that time, SBH's appeal of the grant of Astroline's distress sale assignment application was still pending before the Court of Appeals. Promptly upon learning of the bankruptcy proceeding, SBH notified the Court of the bankruptcy proceeding.

[1/] As the Commission is by now well aware, Astroline obtained the license of Station WHCT-TV, Hartford in 1985, on the basis of its claim that Astroline was a minority-owned entity within the meaning of the Commission's minority distress sale policy. SBH, whose above-captioned application was filed some six months ***before*** Astroline's distress sale assignment application, challenged Astroline's claim when it was first advanced in Astroline's 1984 assignment application. SBH preserved that argument through the Commission, the Court of Appeals, and the Supreme Court.

4. In response, Astroline advised the Court that the pendency of the bankruptcy proceeding was ***not*** "relevant to this appeal." *See* Response to Motion for Leave to File Further Informational Statement, filed by Astroline in *Shurberg Broadcasting of Hartford v. FCC*, No. 84-1600 (D.C. Cir., filed November 17, 1988) (copy included as Attachment A hereto). Consistently with Astroline's assertion on that point, the Commission, the Court of Appeals and the Supreme Court all declined thereafter to ascribe any significance at all to Astroline's bankruptcy.

5. Thus, Astroline had the opportunity, shortly after the commencement of the bankruptcy proceeding, to seek to invoke any Commission policies which might have been available to it based on its status as a bankrupt party. Astroline declined that opportunity, instead taking the position that its bankrupt status was irrelevant. Having made that election and benefited therefrom [2/], Astroline -- and its current representative here, Martin W. Hoffman, Astroline's Trustee -- cannot legitimately change their minds now, some nine years down the road, and claim instead that Astroline's bankrupt status is not only relevant, but dispositive in its favor. Fundamental fairness bars such self-serving fickleness: if Astroline's bankruptcy was irrelevant in 1988, it is equally irrelevant now.

6. SBH recognizes that the Petition for Reconsideration in question here was filed

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[2/] By asserting that the bankruptcy action was not relevant to the Commission's licensing processes, Astroline was able to maintain -- before the Commission, the Court of Appeals and the Supreme Court -- that it was still a minority-controlled entity within the meaning of the Commission's minority distress sale policy, without having to acknowledge that its situation as a debtor-in-possession (as was the case from 1988 through March, 1991) might have undermined the validity of that claim. And, of course, Astroline's ability (valid or otherwise) to claim that it was a minority-controlled entity within the meaning of the Commission's policies was absolutely essential to Astroline's arguments before the Court of Appeals and the Supreme Court.

by TIBS, and not Astroline's trustee, Mr. Hoffman. [3/] But TIBS, as a late arrival, must accept the law of the case as it has developed prior to TIBS's arrival, particularly since that law developed at the direction, or election, of Astroline, a party adverse to SBH and, at least presumably, a party favorable to TIBS.

7. But even if Astroline's previous position were to be ignored, its past misconduct must nevertheless be considered. As noted, TIBS relies on the *LaRose* line of cases for the proposition that Astroline's misconduct is "irrelevant" here. But in so doing, TIBS applies far too narrow a gloss on those cases. In fact, the Commission's policy in this area, as applied in *LaRose* and multiple other cases, is an ***equitable*** policy which requires consideration of a variety of equitable factors. The focus of *LaRose* was the Commission's *Second Thursday* policy. *See Second Thursday Corp.*, 22 F.C.C.2d 515 (1970), 2 F.C.C.2d 112 (1970). And the *Second Thursday* policy, in turn, is just a limited exception to the general rule that an assignment of license will not be authorized during the pendency of a hearing involving the character qualifications of a licensee. *See, e.g., Larose*; *Shell Broadcasting, Inc.*, 38 F.C.C.2d 929 (1973).

8. By relying on *LaRose*, TIBS seems to be saying that the instant proceeding is governed by *Second Thursday*. But that is plainly not the case. As an initial matter, neither TIBS nor -- more importantly -- Astroline's Trustee, Mr. Hoffman sought to invoke the

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[3/] On that score, SBH is constrained to point out that Mr. Hoffman has, since his appointment as trustee in April, 1991, consistently failed to participate in the Commission's proceedings in any meaningful way. While he has occasionally filed cursory pleadings when effectively forced to (*e.g.*, after it was called to his attention that he had failed to file a timely hearing fee, thus necessitating the immediate dismissal of the Astroline renewal application), Mr. Hoffman has not responded to multiple pleadings directed against his applications.

Second Thursday doctrine when their assignment application was filed in September, 1993, nor did either of them invoke that doctrine prior to December, 1996. [4/] It is therefore difficult to understand how that doctrine, which was not even referred to even by TIBS, could suddenly acquire dispositive significance at this late date.

9. Moreover, the *Second Thursday* doctrine applies to situations in which a renewal applicant has been designated for hearing on basic character qualifications. *See, e.g., LaRose*. Here, no designation has occurred as yet. And, at least to hear TIBS tell it, Astroline is not really subject to any character qualifications questions at all. It is difficult to see how TIBS could attempt to invoke *Second Thursday* (and its direct descendant, *LaRose*) when TIBS is at the same time claiming that Astroline's situation is outside the scope of those cases.

10. But even beyond those points, *Second Thursday* and *LaRose* are in any event inapposite here because, as the Review Board has observed, "neither *Second Thursday* nor its progeny involved situations where there was a competing applicant. From that standpoint

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[4/] In its November, 1993 petition to deny the Astroline/TIBS assignment application, SBH had specifically argued that Astroline was guilty of misrepresentation relative to its claim that it qualified as a minority-controlled company for purposes of the Commission's minority distress sale policy. Rather than invoke *Second Thursday* and assert the "irrelevancy" argument which it now embraces, TIBS responded to SBH's argument as follows:

> SBH's attorneys would have the Commission believe that they can resolve the matter of Astroline's minority control by simply believing SBH and that the control did not exist without considering whether SBH is estopped in this proceeding from raising an issue that it has already taken to the Supreme Court. SBH has shown no compelling reason why the Commission should not dismiss its arguments in this proceeding as out of hand.

TIBS's "Response to Petition to Dismiss or Deny Applications for Renewal and Assignment of License of Station WHCT-TV, and Petition for Immediate Grant of Application of Shurberg Broadcasting of Hartford", filed January 10, 1994 (at unnumbered pages 5-6).

alone, *Second Thursday* is inapposite [to situations which include a competing applicant]." *George E. Cameron Jr. Communications*, 53 R.R.2d 917, 944, n. 66 (Rev. Bd. 1983). *See also RKO General, Inc.*, 65 R.R.2d 192, 198, n. 17 (1988) (noting that distress sale policy does not apply to comparative renewal proceedings "because of the hearing rights of competing applicants"). That is, the presence of a competing applicant gives rise to a separate set of equitable considerations which were not addressed (because they did not need to be addressed) in *LaRose* or *Second Thursday*. [5/]

11. For example, in *Peoria Community Broadcasters, Inc.*, 47 R.R.2d 1463 (1980), the Commission was confronted with a bankrupt licensee, a competing applicant, and an application by the licensee to assign its license to a third-party. The Commission declined to approve the assignment application, noting *inter alia* that the assignment application had been filed almost two years after the competing construction permit application. [6/] 47 R.R.2d at 1475, ¶35. *See also George E. Cameron Jr. Communications*, 52 R.R.2d 455, 480 (Rev. Bd. 1982) (noting equities of competing applicant which had "patiently prosecuted

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[5/] It should be noted that both the *Cameron* and *RKO* decisions were issued years *after* *LaRose*. They therefore reflect the Commission's own interpretation and implementation of its own policies in light of *LaRose*.

[6/] In *Peoria*, the licensee in question was serving as a debtor-in-possession. Because of this, the Commission found that "the rationale that the trustee/receiver in the ordinary bankruptcy case is in no position to explain or answer for the misdeeds of the licensee is not applicable". 47 R.R.2d at 1475, ¶35. That rationale is equally inapplicable to Astroline's situation, even though Mr. Hoffman is a trustee in bankruptcy: Mr. Hoffman has had ample opportunity, through the bankruptcy process, to investigate Astroline's conduct. On the basis of that extensive investigation, Mr. Hoffman has reached a number of conclusions, including, *inter alia*, that "[n]otwithstanding the FCC minority preference guidelines", Richard Ramirez (Astroline's supposedly 21% minority owner) actually owned less than 1% of Astroline in 1985, 1986 and 1987. *See* Mr. Hoffman's Brief filed in *Hoffman v. WHCT Management, Inc.*, Case No. 96-5112 (2d Cir., brief filed November 8, 1996) (copy of excerpt included as Attachment B hereto). In other words, from his extensive investigation, Mr. Hoffman *is* in a position to address Astroline's misdeeds.

its application in good faith under the statutory mechanism established by Congress"); *RKO General, Inc., supra.*

12. In the instant case, SBH's application had already been pending for *almost a decade before* TIBS arrived on the scene. Indeed, SBH has been a competing applicant for the Channel 18 authorization since even before Astroline appeared on the scene (or, indeed, before it even existed at all): SBH's application was filed in December, 1983, while Astroline's distress sale assignment application was not filed until mid-1984. Unquestionably, SBH was entitled to a hearing against Astroline, and not some entity who happened to arrive at the party ten years too late. [7/] Under these circumstances, contrary to TIBS's claim, Astroline's misconduct is highly relevant and cannot properly be ignored.

13. This is especially so in view of the fact that Astroline's misrepresentations enabled Astroline to succeed in its original acquisition of the station over SBH's continued protests, protests which included precisely the point as to which Astroline was lying. It is hard to imagine an entity with a stronger equitable claim here than SBH, which diligently sought to bring to the Commission's attention the fraud which underlay Astroline's position from 1984-1990. Now that that fraud can be documented, it would be inequitable in the extreme to switch the rules of the game to make Astroline's misconduct "irrelevant".

[7/] *See, e.g.*, the Order of Court of Appeals, filed June 25, 1987, in SBH's original appeal (a copy of which is included as Attachment C hereto). In that Order (issued almost 10 years ago), the Court, apparently concerned about the delay already encountered up to that point, ordered the Commission to proceed promptly with the processing of any competing applications which might be filed within the appropriate filing periods. The only such competing applicant pending before the Commission at the time of that Order, and still (ten years later) presently pending, for that matter, was SBH. It is also noteworthy that, in that Order, the Court specifically provided that, in any comparative hearing designated pursuant to the Order's terms, Astroline would not be entitled to any benefits flowing from its incumbency.

14. In summary, the Commission's general rule is that an assignment of license will *not* be authorized while there are serious character qualifications questions pending relative to the licensee. While some exceptions to that general rule have been developed -- including the *LaRose/Second Thursday* line of cases on which TIBS relies -- those exceptions are equitable in nature and require the evaluation of all equitable considerations. One crucial such consideration here is the pendency of SBH's application, which predates not only TIBS's application (by some 10 years) but Astroline's as well. The importance of that consideration is substantially increased by the fact that SBH sought to raise the question of Astroline's misrepresentation to the Commission's (and the Courts') attention since 1984. To the extent that *LaRose/Second Thursday* might be said to have any applicability here -- and they appear, in fact, to be inapposite, *see, e.g., George E. Cameron Jr. Communications*, 53 R.R.2d 917, 944, n. 66 (Rev. Bd. 1983) -- any significance of those cases is plainly outweighed by the equities to which SBH is rightfully entitled. [8/]

B. ***SBH Did Not Withhold Pertinent Information.***

15. Next, TIBS claims that SBH "withheld pertinent information which contradicted the submission it made." TIBS Petition at 8. That just isn't true.

16. The basis for TIBS's claim is a decision by Judge Krechevsky in the Astroline bankruptcy proceeding, a copy of which is included with TIBS's pleading. As that decision makes clear, it was issued to resolve a claim, by Mr. Hoffman, that the supposedly "limited"

[8/] A further point supporting SBH's position here is that the Court of Appeals, in denying SBH's Petition for Recall of Mandate, specifically indicated that the allegations concerning Astroline's fraud should be addressed in the first instance by the Commission. Obviously, if TIBS's claims had any merit at all, the Court would have had no reason to include that proviso in its February 27, 1997 Order.

partners in Astroline should be treated as "general" partners insofar as their liability for Astroline's debts is concerned. The determination of liability sought by Mr. Hoffman and addressed by Judge Krechevsky required an interpretation of the Massachusetts Limited Partnership Act, which governs the liability of Astroline's partners. Judge Krechevsky's determination did *not* require any reference to the details of the Commission's minority distress sale policy or Astroline's representations to the Commission and the Courts concerning its claim that it qualified as a minority-controlled entity under that policy. [9/] And, as is to be expected, Judge Krechevsky's opinion contains absolutely no discussion at all of the Commission's policy or Astroline's representations relative thereto.

17. But SBH's claims, to the Commission and the Court of Appeals, relate to precisely that issue which was neither relevant to nor addressed in Judge Krechevsky's decision: did Astroline lie to the Commission and the Courts when it claimed, repeatedly and continuously over a period of six years, that Astroline qualified as a "minority-controlled entity" under the terms of the Commission's distress sale policy? The documents which SBH has uncovered and submitted to the Commission and the Court of Appeals clearly demonstrate that Astroline did lie.

18. The Commission's minority distress sale policy requires, at a minimum, that the minority person supposedly controlling the limited partnership own "at least 20% interest in the partnership." *See Advancement of Minority Ownership in Broadcasting*, 92 F.C.C.2d 849, 853-55 (1982). In its initial assignment application filed in 1984, Astroline represented

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[9/] It is, of course, well established that the Commission's own understanding of the term "limited partnership" for purposes of the Commission's rules and policies is distinct in many important ways from the definition applied to that term by various states in the implementation of their own laws. *E.g.*, *Ownership Attribution*, 58 R.R.2d 604, 615-620 (1985).

that it complied with that explicit standard; Astroline continued to maintain to the Commission that Mr. Ramirez owned 21% through October, 1988. *See* Attachment D. In its May 30, 1985 brief on the merits to the Court of Appeals in SBH's appeal (No. 84-1600), Astroline repr esented that Mr. Ramirez held a 21% ownership interest and that Astroline's structure fully complied with the FCC's definition of "minority-control". Astroline Brief at 39-44 (D.C. Cir., No. 84-1600), filed May 30, 1985. Before the Supreme Court Astroline continued to characterize itself as a "minority-controlled limited partnership" whose structure "complied with the FCC's established criteria for limited partnership's eligibility for distress sales." Astroline Brief in *Astroline Communications Company Limited Partnership v. Shurberg Broadcasting of Hartford* (U.S.S.C., No. 89-700), filed February 9, 1990, at 13.

19. But, as SBH has demonstrated, from 1985 through 1987, Astroline was representing to the Internal Revenue Service that, in fact, Mr. Ramirez held an interest in Astroline of significantly less than 1%. *See* Attachment E. That alone deprived Astroline of any legitimate claim to being "minority-controlled" within the meaning of the distress sale policy. And yet, Astroline continued to make precisely that claim -- to the Commission, the Court of Appeals and the Supreme Court -- throughout that same period.

20. Moreover, as noted above, the Commission's understanding of the term "limited partnership" is plainly distinct from the definition applied to that term by the various states. In particular, among other things, a true limited partner may not, for purposes of the Commission's rules and policies, communicate with the general partner on matters pertaining to the day-to-day operation of the partnership's business. *E.g.*, *Ownership Attribution*, 58 R.R.2d at 619-620. But the documents which SBH has presented to the Commission and the Court demonstrate unequivocally that Astroline's supposed limited partners were

regularly consulted, and their approval was required, on the widest possible variety of day-to-day matters. Indeed, as even Judge Krechevsky found, Mr. Ramirez (the supposedly controlling principal) did not even have a checkbook for Astroline; rather, the supposed limited partners controlled Astroline's checkbook and the underlying accounts. [10/]

21. The available evidence thus demonstrates that, contrary to its repeated representations to the Commission and the Courts, Astroline was *not* a "minority-controlled" entity within the meaning of the Commission's policies. Therein lies Astroline's misrepresentation, a misrepresentation which is not ameliorated or otherwise avoided by any reference to Judge Krechevsky's decision. [11/]

C. *The Bare License Policy Precludes Grant of the Assignment Application.*

22. TIBS also asserts that the Commission's "bare license" policy is not applicable here. TIBS is wrong again.

23. The appropriate question, as framed by the Commission in its January 30, 1997 Letter, is whether "the assignor held [any]thing more than a bare license at the time it filed the instant assignment application in 1993." While TIBS attempts to ignore the intervening three-plus years, the fact is that, as of September, 1993 (when the Astroline/TIBS

[10/] It is perhaps unsurprising that TIBS apparently believes that, in a "limited" partnership, it is appropriate for the "general" partner not to have access to the partnership's checkbook. In *Religious Broadcasting Network*, 3 FCC Rcd 4085 (Rev. Bd. 1988), a limited partnership formed by TIBS's controlling principal, Micheal Parker, was found to be a "travesty and a hoax", a "transpicuous sham" constituting "attempted fraud". 3 FCC Rcd at 4090-4091. The checkbook for that particular not-quite-limited partnership was held *not* by the supposed general partner, but rather by Mr. Parker himself.

[11/] SBH notes that Mr. Hoffman, who is theoretically on TIBS's side before the Commission, has himself argued to the Second Circuit that Astroline was not in compliance with the Commission's definition of "minority-contolled entity" from 1985-1987, at least. *See* Attachment B.

assignment application was filed), Mr. Hoffman had nothing to sell TIBS other than the station's license. Further, any arrangements which TIBS may have made to obtain the facilities necessary to commence operation of the station were apparently not made prior to January 10, 1997.

24. TIBS initially attempts to hang its hat on a lease to the Astroline tower site, a lease which TIBS supposedly acquired from Mr. Hoffman. But that lease (a copy of which is included as an exhibit to TIBS's Petition) states that, upon 90 days notice by one of the parties, the lease would expire on July 22. *See* "Fourteenth Amendment of Lease", page 2, ¶1. The Lessor, Astroline Connecticut, Inc. ("ACI"), gave notice of termination on April 21, 1993, more than 90 days prior to July 22, 1993. *See* Attachment F hereto, which is a copy of a "Motion for Reconsideration" filed by the Mr. Hoffman in the bankruptcy proceeding on April 26, 1993. In that Motion the Mr. Hoffman himself recites, at Paragraph 7, that notice of termination of the lease was given on April 21, 1993. Thus, whatever interest Astroline may have retained in that lease expired as of July 22, 1993, two months ***before*** the Astroline/TIBS assignment application was even filed at the Commission.

25. TIBS then engaged, unsuccessfully, in litigation apparently intended to avoid or nullify the expiration of the lease. The result of that litigation was a "Stipulation", entered into on April 13, 1995 -- almost two years ***after*** the filing of the TIBS assignment application. That "Stipulation" was not itself a lease. Rather, it merely provided that Astroline Connecticut, Inc. (an entity technically distinct from Astroline, albeit sharing principals with Astroline) would, upon the occurrence of certain events within a limited two-year timeframe, enter into a lease. *See* Attachment G. Since the Stipulation also contained language concerning the manufacture and installation of equipment by TIBS, it did not appear

that the Stipulation included the provision of any equipment to TIBS. *Id.* [12/]

26. The condition(s) precedent specified in the Stipulation never arose and, therefore, no lease was ever entered into pursuant to the Stipulation from April, 1995 through December, 1996. TIBS apparently believed that the Stipulation was still in effect in December, 1996, however, because TIBS relied on the Stipulation in its letter seeking emergency relief from the Commission. In response, SBH demonstrated that Astroline Connecticut, Inc. had sold the tower site a year before (in December, 1995) to a third party. It was only then, in mid-January, 1997, that TIBS entered into a lease with that third party, a third party who had (as far as SBH can tell from the available records) obtained absolutely nothing, directly or indirectly, from Mr. Hoffman or the Astroline estate.

27. The Commission's "bare license" policy has, for some 30 years, precluded the assignment of a mere license without more. *E.g.*, *Donald L. Horton*, 10 F.C.C.2d 271 (1967); *Edward B. Mulrooney*, 13 F.C.C.2d 946 (1968); *Bonanza Broadcasting Corp.*, 10 F.C.C.2d 906 (1967). The Commission will, in order to accommodate certain peculiar situations, deem the more-or-less-simultaneous consummation of two contemporaneous transactions to be a single transaction for purposes of the "bare license" policy. *See*, *e.g.*, *Arecibo Radio Corp.*, 101 F.C.C.2d 545 (1985). In such exceptional cases, the

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[12/] It is reasonably well established that TIBS's original, broadly self-serving, understanding of the "lease" it supposedly acquired from Mr. Hoffman did ***not*** include any equipment. As TIBS itself stated in its "Response" (filed January 10, 1994) to SBH's petition to deny the assignment application:

> [W]hile it is true that the WHCT-TV studio and equipment are no longer part of the bankruptcy estate, there is in fact equipment in the transmitter building located at the transmitter site (which equipment TIBS has been negotiating with the owners to purchase), along with the broadcast tower, antenna and downlinks.

Commission's primary concern is that the proposed transactions will assure continuation of broadcast service. *See American Music Radio*, 10 FCC Rcd 8769, 8772 (1995).

28. Here, quite clearly, neither Mr. Hoffman nor TIBS has come anywhere close to the kind of showing which would be required to satisfy the "bare license" policy. Mr. Hoffman and the Astroline estate held nothing more than the station's license as of early 1993 (and possibly earlier), as SBH has previously (and repeatedly) advised the Commission. The estate owned no equipment with which to operate a station and, at most, it held a tower site lease which was terminable by either party on 90 days' notice. Notice of termination of that lease was given in April, 1993, effective July, 1993.

29. When Mr. Hoffman and TIBS presented themselves to the Commission in their September, 1993 assignment application, then, all that either party had was the station's license. Neither had any equipment, and neither had any lease. The most that could be said was that TIBS had some litigation which it was hoping to parlay into something akin to a lease, albeit a lease without (apparently) any equipment attached.

30. That litigation effort, in turn, did not result in any lease, but rather the April, 1995 "Stipulation" which presented, at most, the mere possibility of a lease at some future time. But then, apparently unbeknownst to TIBS, Astroline Connecticut, Inc. -- the other party to the Stipulation -- sold the tower site (in December, 1995), thereby eliminating the possibility that TIBS might ever avail itself of its agreed-to "Stipulation" with Astroline Connecticut. So as of December, 1995, TIBS was back to square one.

31. And that is where it stayed through 1996. Indeed, in December, 1996, when TIBS sought to convince the Commission that TIBS really, really was then able to construct and operate the station, TIBS shockingly relied on the Stipulation, apparently unaware that

the other party to that Stipulation hadn't owned the property for a year! It was only after SBH called the Commission's (and TIBS's) attention to this that TIBS, in mid- January, 1997, executed a lease with the new third-party owner of the site.

32. In view of this chronology, it is clear that the "bare license" policy prohibits the proposed assignment. Neither Astroline (nor its Trustee, Mr. Hoffman) nor TIBS held anything more than a license as of September, 1993 (when the assignment application was filed), and none of them ever acquired anything more than that at any time prior to mid-January, 1997. [13/]

33. The Commission's January 30, 1997 Letter thus accurately stated the applicable law and the relevant facts. TIBS's Petition for Reconsideration merely confirms the accuracy of the Letter on both counts. [14/]

D. *TIBS Is Unqualified To Be Or Remain A Licensee.*

34. TIBS also takes issue with the notion that, because its dominant principal, Mr. Parker, has already been found to have engaged in fraud on the Commission, serious questions exist concerning TIBS's qualifications to become or remain a licensee. TIBS's defense on this point aggravates, rather than ameliorates, TIBS's position here.

35. The Commission's January 30, 1997 Letter refers to the fact that an applicant

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[13/] Since the limited exceptions to the "bare license" policy are based, at least in part, on the notion that an existing station's service should not be interrupted if possible, it is clear that Astroline's situation does not fall within the intended reach of those exceptions. The station was off the air from April, 1991 through January, 1997.

[14/] As noted above, Mr. Hoffman has not sought reconsideration of the January 30, 1997 Letter -- and, for that matter, he did not join in TIBS's December, 1996 emergency request *or* respond to SBH's pleadings to the Commission relative thereto. His silence in this regard may be taken as further confirmation of the correctness of SBH's argument, which appears to have been adopted by the Commission in the January 30, 1997 Letter, that the proposed assignment to TIBS does not include anything more than a bare license.